

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 8561

Investigation pursuant to 30 V.S.A. §§ 30 and 209)
regarding the Construction and Operation of a)
Metereological Tower located in Swanton, Vermont)

Order entered: 11/6/2015

PROCEDURAL ORDER RE: INTERVENTION

On July 6, 2015, the Vermont Public Service Board (the "Board") received a letter from Christine and Dustin Lang (the "Langs") regarding the existence of a meteorological tower located in Swanton, Vermont, that is allegedly being used to gather wind measurement data for assessing the feasibility of a wind electric generating facility in that location.

On August 7, 2015, the Board initiated an investigation to determine whether the construction and operation of the meteorological tower were authorized and, if not, whether it is appropriate to order any remedial action, impose a penalty, or take any other steps authorized by law.

On September 4, 2015, I issued an Order establishing deadlines for filing motions to intervene and responses to any such motions.¹

On September 4, 2015, the Langs filed a motion to intervene in this proceeding (the "1st Lang Motion").

On September 11, 2015, the Vermont Department of Public Service ("DPS" or the "Department") filed comments on the 1st Lang Motion recommending that the Langs file more detailed facts (the "DPS Comments").

On September 21, 2015, Travis Belisle (the "Respondent") filed comments in opposition to the 1st Lang Motion (the "Respondent's Comments").

1. See Docket 8561, Order of 9/4/15.

On October 8, 2015, I denied the 1st Lang Motion without prejudice noting that I would reconsider the request if the Langs filed a renewed motion providing supplementary information to substantiate their interest in the outcome of this proceeding.

On October 16, 2015, the Langs filed a second motion to intervene providing supplementary information (the "2nd Lang Motion").

On October 22, 2015, I directed that any comments on the 2nd Lang Motion be filed by October 30, 2015.

On October 27, 2015, the DPS filed comments in support of the Langs' renewed intervention request ("DPS Comments"). The Department also represented that the Vermont Agency of Natural Resources ("ANR") did not object to the Langs' intervention.

On October 30, 2015, the Respondent filed comments in opposition to the 2nd Lang Motion ("Respondent's Comments").

In today's Order, I grant the 2nd Lang Motion.

II. DISCUSSION AND CONCLUSION

The Langs contend that they meet the requirements for permissive intervention under PSB Rule 2.209(B). The Langs state that, as adjoining property owners, they have a substantial, particularized interest "in making sure that there is a penalty sufficient to create an incentive for Travis Belisle to follow the law in the future."² The Langs assert that neither the Department nor ANR can adequately represent their interests and that their intervention is timely and will not unduly delay these proceedings or prejudice the interests of existing parties or of the public.³

The Respondent recommends that the 2nd Lang Motion be denied because "they do not satisfy the criteria for permissive intervention and may be motivated to participate as parties for the wrong reasons."⁴ The Respondent argues that the Langs' interest in ensuring that an appropriate penalty is assessed if a violation of law occurred is not a particularized interest but one shared by the general public, the Department, ANR, and the Board.

2. 2nd Lang Motion at 1.

3. *Id.* at 3.

4. Respondent's Comments at 3.

I disagree. The Department states that the Langs have demonstrated that their interests diverge from those of the general public and it "does not believe its statutory grant of authority supports an ability to . . . adequately represent the Langs' interests in this proceeding."⁵ The Langs' interest also goes beyond ANR's environmental stewardship responsibilities. The Board is exercising its jurisdiction to investigate and adjudicate, but this exercise of jurisdiction does not include advocating for the Langs' interests. Accordingly, I find that the Langs have established an interest that may be affected by the outcome of this Docket that is not adequately represented by any other party to this proceeding.

I do, however, agree with the Respondent that the Langs' interest in the development, use, and maintenance of Rocky Ridge Road is outside the scope of this proceeding. The purpose of this proceeding is to investigate and impose a penalty, if appropriate, for the installation of a meteorological tower. This proceeding has no jurisdiction to resolve issues related the Langs' allegations of Mr. Belisle's wrongdoing in the prior development, use, and maintenance of Rocky Ridge Road and their neighboring property.

Additionally, the Board is prohibited by Rule 404 of the Vermont Rules of Evidence from relying upon information about other crimes, wrongs, or acts to prove the character of Mr. Belisle in order to show he acted in conformity therewith in the construction and operation of a meteorological tower. Further, while the Board shall consider "any other aggravating . . . circumstances"⁶ when imposing a penalty, this consideration is tempered by the nature and quality of any such information presented. For example, an allegation of wrongdoing may not have the same probative value as a determination of wrongdoing by a court of competent jurisdiction and therefore may not amount to aggravating evidence relevant under 30 V.S.A. § 30(c)(8).

While I find that the Langs have set forth a substantial interest that may be affected by the outcome of the proceeding that is sufficient for permissive intervention under Rule 2.209(B), this Order restricts their participation to their particular interest as adjoining landowners in "making

5. DPS Comments at 2.

6. 30 V.S.A. § 30(c)(8).

sure that there is a penalty sufficient to create an incentive for Travis Belisle to follow the law in the future."

In the first scheduling Order in this Docket, I noted that "[i]f a person/entity moves to intervene and that intervention is granted, further adjustments to the schedule shall be considered."⁷ Any motion to adjust the schedule in response to this Order shall be made by November 20, 2015.

SO ORDERED.

Dated at Montpelier, Vermont, this 6th day of November, 2015.

s/Michael E. Tousley
Michael E. Tousley, Esq.
Hearing Officer

OFFICE OF THE CLERK

FILED: November 6, 2015

ATTEST: s/Judith C. Whitney
Deputy Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@vermont.gov)

7. Docket 8561, Order of 9/4/15 at 2 n.2.